No. 22,675

United States Court of Appeals

For the Ninth Circuit

J. Bryant Kasey and Maryann Kasey,
Appellants,

vs.

Commissioner of Internal Revenue and Secretary of the Treasury of the United States,
Appellees.

On Appeal from the Order of the United States District Court for the District of Nevada

BRIEF FOR THE APPELLEES

Mitchell Rogovin,
Assistant Attorney General
Lee A. Jackson,
Elmer J. Kelsey,
Stephen H. Hutzelman,
Attorneys
Department of Justice,
Washington, D.C. 20530

Of Counsel:
Joseph L. Ward,
United States Attorney

PARKER PRINTING CO., SAN FRANCISCO, CALIFORNIA

Table of Contents

Table of Citations

Constitutions

declaratory judgment that the Internal Revenue Code is unconstitutional.

STATEMENT OF THE CASE

This appeal involves federal income taxes. On August 11, 1967, the taxpayers, J. Bryant Kasey and Maryann Kasey, filed a complaint in the United States District Court for the District of Nevada demanding money due for services and a permanent injunction. (R. 2-4.) The complaint demanded (1) the sum of $3,960 as compensation for keeping tax records and filing tax returns, (2) a permanent injunction against enforcement of the Internal Revenue Code of 1954 because it allegedly violates the Fifth and Thirteenth Amendments to the Constitution, and (3) a declaratory judgment that the Internal Revenue Code of 1954 is unconstitutional. (R. 2-4.) On November 13, 1967, the defendants filed a motion to dismiss taxpayers' complaint because the District Court lacked jurisdiction over its subject matter. (R. 22-23.) On December 29, 1967, the taxpayers filed an answer and memorandum of points and authorities in opposition to the motion to dismiss taxpayers' complaint. (R. 33-38.) The order of the District Court, without opinion, granting the motion to dismiss, with prejudice, was entered on January 19, 1968. (R. 41.) Within sixty days thereafter, taxpayers filed a notice of appeal from this order on February 13, 1968. (R. 42.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

ARGUMENT

I

THE PROVISIONS OF THE INTERNAL REVENUE CODE REQUIRING TAXPAYERS TO KEEP RECORDS AND FILE TAX RETURNS ARE CONSTITUTIONAL

Taxpayers' primary claim is that they are entitled to compensation at the rate of twenty dollars per hour for the time they used to keep tax records and prepare their own tax returns. (R. 2, 5.) They contend (Br. 4-5) that Sections 6001, 6011, and 6012 (Appendix, *infra),* which, together with the criminal penalties, Sections 7203 and 7210, require the keeping of records and filing tax returns, violate the Fifth and Thirteenth Amendments to the Constitution (Appendix, *infra),* which forbid, respectively, a person being compelled in any criminal case to be a witness against himself and involuntary servitude. Such provisions for record-keeping and returns are essential to the self-assessment method on which the federal income tax is based. Similar statutes have been a part of the tax laws since the enactment of the original Income Tax Act of 1913, c. 16, 38 Stat. 114, 166, Section II D. They have been repeatedly upheld by the courts against constitutional attacks such as taxpayers make here. *United States v. Sullivan,* 274 U.S. 259 (1927); *Brushaber v. Union Pac. R.R.,* 240 U.S. 1 (1916); *Erwin v. Cranquist,* 253 F. 2d 26 (1958), certiorari denied, 356 U.S. 960 (1958); *Abney v. Campbell,* 206 F. 2d 836 (C.A. 5th, 1953), certiorari denied, 346 U.S. 924 (1954); *Kellems v. United States,* 97 F. Supp. 681 (Conn., 1950). Cf. *Shinder v. Commissioner,* decided May 17, 1968 (21 A.F.T.R. 2d

1378), where this Court recently rejected a broad constitutional attack on the Internal Revenue Code.

The power to require tax returns and the keeping of records is clearly within the provision of Article 1, Section 8, of the Constitution (Appendix, *infra),* granting the Congress authority "to make all laws which shall be necessary and proper" for executing the power given to it by the Sixteenth Amendment to lay and collect taxes on income. *Brushaber v. Union Pac. R.R., supra.* Thus, the statutes requiring records and returns are clearly within the conclusion expressed by this Court in *Erwin v. Cranquist, supra* (p. 27):

> The Sixteenth Amendment's grant of power "to lay and collect taxes on incomes", gave Congress power to accomplish that end by "all means which are appropriate, which are plainly adapted to that end, and which are not prohibited." *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L. Ed. 579. * * *

The contention that the Internal Revenue Code violates the Thirteenth Amendment prohibition against involuntary servitude is therefore without foundation. In *Abney v. Campbell, supra,* the court rejected a Thirteenth Amendment argument that the burden of keeping records required of employees in withholding taxes on wages created a servitude (p. 841):

> The specification, that the act violates the Thirteenth Amendment by imposing involuntary servitude upon an employer of domestic servants, seems to us far-fetched, indeed frivolous. There is

> no suggestion, in the law, of the imposition of a servitude, there is merely a requirement that as to the tax due by domestic employees on account of wages paid them by their employer, the employer must withhold the amount fixed by law and account it to the United States. The enforcement of the act is not the imposition of a servitude. It is the collection of a tax and the enforcement of an obligation, which under settled federal law appellants may be and are lawfully subjected to. From our holding that the taxes and burdens imposed are valid, it must follow that the enforcement of the law imposing them is not, it cannot be, a violation of the Thirteenth Amendment.

The requirement that a taxpayer file a return of his income does not violate the Fifth Amendment privilege against self-incrimination. In the words of Mr. Justice Holmes in *United States v. Sullivan, supra* (pp. 263-264):

> If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any return at all. We are not called on to decide what, if anything, he might have withheld. Most of the items warranted no complaint. It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime. But if the defendant desired to test that or any other point he should have tested it in the return so that it could be passed upon. He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the gov-

> ernment blank would bring him into danger of the law.

The requirement that a taxpayer keep records which are to be available for inspection by the taxing authorities likewise does not violate the Fifth Amendment privilege against self-incrimination. In *United States v. Bouschor,* 200 F. Supp. 541, 542 (Minn., 1961), affirmed, 316 F. 2d 451 (C.A. 8th, 1953), the court stated:

> The documents which the Government seeks to examine in the present proceeding are the taxpayer's records relating to his income tax liability for the years in question. Records of this nature are required to be kept pursuant to 26 U.S.C. § 6001. The requirements of this Section, together with the authorization given the Commissioner to examine such records under Section 7602, do not violate the taxpayer's rights under either the Fourth or the Fifth Amendments.

See also *Shapiro v. United States,* 335 U.S. 1, 32-34 (1948); *United States v. Murdock,* 284 U.S. 141 (1931); *Falsone v. United States,* 205 F. 2d 734, 739 (C.A. 5th, 1953).

Taxpayers claim that they are entitled to compensation at the rate of twenty dollars per hour for keeping records and filing tax returns as a matter of constitutional right. No statutory or case authority was cited to support this unique theory of recovery. The constitutional argument must be that when a taxpayer is required to render services to his Government in connection with a valid tax law, there is a taking of property without due compensation in viola-

tion of the Fifth Amendment. Such an argument is without merit.

There is not necessarily a "taking" when a citizen is compelled to render services to his Government. For example, a lawyer compelled by the court to defend an indigent client has no constitutional right to compensation. *Wright v. State of Louisiana,* 362 F. 2d 95 (C.A. 5th, 1966); *United States v. Dillon,* 346 F. 2d 633 (1965). A conscientious objector to war compelled to undertake alternate service to the military has suffered no taking of his property. *Roodenko v. United States,* 147 F. 2d 752 (C.A. 10th, 1944).

Even what appears to be a taking of property does not violate the Fifth Amendment if the supposed taking is an exercise of a legitimate governmental power. The police power of a state sustained the destruction of red cedar trees which carried a disease threatening nearby apple trees which were important to the local economy. *Bowman v. Va. State Entomologist,* 128 Va. 351, 105 S.E. 141 (1920). The destruction by the Army of oil terminals near Manila in order to prevent their capture and use by the Japanese was protected by the war power. *United States v. Caltex, Inc.,* 344 U.S. 149 (1952).

The power to tax itself can justify what could otherwise be a taking. The payment of a tax is not a taking without due compensation. *Houck v. Little River District,* 239 U.S. 254, 264-265 (1915). At the same time, statutes requiring the performance of services in connection with a tax have been held valid. Primary among these is the federal withholding tax

system and the burden it places upon employers. *Brushaber v. Union Pac. R. R.,* 240 U.S. 1 (1916); *Abney v. Campbell,* 206 F. 2d 836 (C.A. 5th, 1953), certiorari denied, 346 U.S. 924 (1954); *Kellems v. United States,* 97 F. Supp. 681 (Conn. 1951). Many state statutes requiring services from taxpayers in connection with the payment of a tax have been sustained against constitutional arguments. *Gafill v. Bracken,* 195 Ind. 551, 145 N.E. 312 (1924); *United States Cold Storage Corp. v. Stolinski,* 168 Nebr. 513, 96 N.W. 2d 408 (1959); *Interstate Forwarding Co. v. Vineyard,* 3 S.W. 2d 947 (Tex. Civ. App. 1928), reversed, 121 Tex. 289, 49 S.W. 2d 403 (1932); *Morrow v. Henneford,* 182 Wash. 625, 47 P. 2d 1016 (1935); *State ex rel. Froedtert G. & M. Co. v. Tax Comm.,* 221 Wis. 225, 267 N.W. 52 (1936). These principles have been well settled for many years. Thus, there is absolutely no merit to taxpayers' claim that they are entitled to compensation for services rendered to the Government. Taxpayers' demand for a money judgment failed to state a claim upon which relief could be granted.

II

THE DISTRICT COURT PROPERLY DISMISSED TAXPAYERS' COMPLAINT BECAUSE IT LACKED JURISDICTION

A. The suit is against the United States, which has not consented thereto

The District Court below correctly dismissed this suit. Although it is brought, in form, against the Commissioner of Internal Revenue and the Secretary of the Treasury, the suit, in substance, is against the

United States. Congress has not authorized suits against these officers, *eo nomine.*[1] In the words of the Supreme Court in *Blackmar v. Guerre,* 342 U.S. 512, 515 (1952):

> When Congress authorizes one of its agencies to be sued *eo nomine,* it does so in explicit language, or impliedly because the agency is the offspring of such a suable entity.

The suit is accordingly against the United States, which has not consented thereto. The Commissioner of Internal Revenue and the Secretary of the Treasury cannot be sued, merely by their titles, in evasion of the sovereign immunity of the United States. *Thomason v. Works Projects Administration,* 138 F. 2d 342 (C.A. 9th, 1943); *Laughlin v. Harrington,* 256 F. 2d 893 (C.A. D.C., 1958), certiorari denied, 358 U.S. 945 (1959); *New Haven Public Schools v. General Services Admin.,* 214 F. 2d 592 (C.A. 7th, 1954); *Jacobs v. District Director of Internal Revenue,* 217 F. Supp. 104 (S.D. N.Y., 1963); *Film Truck Service, Inc. v. Nixon,* 216 F. Supp. 77 (E.D Mich,, 1963). See also *United States v. Remund,* 330 U.S. 539 ,(1947).

Futhermore, this suit could not be against the incumbents of the offices named in the complaint personally because they were acting properly within the scope of the authority conferred on them by Congress in the Internal Revenue Code. They could not be per-

---

[1]Federal Rules of Civil Procedure, Rule 25(d), is not *contra* because it is intended to be a "simple procedural rule for substitution" not to be distorted "by mistaken analogies to the doctrine of sovereign immunity from suit". See, Notes of Advisory Committee on Rules, Rule 25, Federal Rules of Civil Procedure (28 U.S.C.A. (1967) Cum. Pocket Part).

sonally liable on the facts alleged in this case. Such a suit would also be a suit against the United States to which it has not consented. *Hawaii v. Gordon,* 373 U.S. 57 (1963); *Larson v. Domestic & Foreign Corp.,* 337 U.S. 682 (1949); *Land v. Dollar,* 330 U.S. 731 (1947); *Holmes v. Eddy,* 341 F. 2d 477 (C.A. 4th, 1965), certiorari denied, 382 U.S. 892 (1965).

B. The District Court did not have jurisdiction to hear taxpayers' demand for a money judgment

The taxpayers sued for "the payment to them of the said sum of $3,960.00, plus accumulated, compounded interest of 6%." (R. 2, 4.) The theory behind this demand for payment was not the refund of taxes but that the United States, through implied contract, was under an obligation to pay taxpayers such sum for services rendered.

The services at issue were taxpayers' keeping of records as required by Section 6001 of the Internal Revenue Code of 1954 and the Regulations issued thereunder. Taxpayers also demanded compensation for the time required to prepare the return they were required to file by Section 6012(a)(1) of the Internal Revenue Code of 1954.

The taxpayers allege that jurisdiction to hear this case was conferred upon the District Court by 28 U.S.C., Section 1346(a)(2) (Appendix, *infra*), commonly known as the Tucker Act.[2]

---

[2]It is clear that this section does not give the court jurisdiction to hear those parts of taxpayer's complaint requesting a declaratory judgment or an injunction against the enforcement of the Internal Revenue Code. This Court held in *Wells v. United States,* 280 F. 2d 275, 277 (1960), that "This Act does not give consent

Taxpayers' theory of recovery apparently is that the Fifth and Thirteenth Amendments to the Constitution of the United States created a circumstance under which they were entitled to be compensated for the time they spent meeting their obligations to the Government. This theory is a theory of recovery based upon implied contract. It is the taxpayers' contention that the Tucker Act granted the jurisdiction to hear such a case in implied contract to the District Court. This contention, however, is not well founded. The United States Supreme Court held in *United States v. Minn. Investment Co.,* 271 U.S. 212, 217 (1926), that:

> An implied contract in order to give the Court of Claims or a district court under the Tucker Act jurisdiction to give judgment against the Government must be one implied in fact and not one based merely on equitable considerations and implied in law.

Accord, see *Phillips v. United States,* 346 F. 2d 999 (C.A. 2d, 1965); *Alliance Assurance Co. v. United States,* 252 F. 2d 529, 532 (C.A. 2d, 1958); *Richter v. United States,* 190 F. Supp. 159 (E.D. Pa., 1960); *Holbert v. United States,* 167 F. Supp. 179 (E.D. Tenn., 1958). Thus, in order to determine the jurisdiction of the District Court, it is necessary to distinguish between contracts implied at law and contracts implied in fact. The distinction between these two forms of implied contracts is drawn quite concisely in I Williston, Contracts (3d ed. 1957), Sec. 3:

---

to suits where only declaratory or other equitable relief is sought. It applies only to suits for recovery of damages."

> The expression "implied contract" has given rise to great confusion in the law. * * * Some of these rights [enforced by contractual action], however, were created, not by any promise or mutual assent of the parties, but were imposed by law on the defendant irrespective of, and sometimes in violation of, his intention. Such obligations were called implied contracts. Another name is that now generally in use of "quasi contracts." This expression makes clear that the obligations in question are not true contracts, and it also avoids confusion with another class of obligations which have also been called implied contracts. This latter class consists of obligations arising from mutual agreement and intent to promise but where the agreement and promise have not been expressed in words. Such transactions are true contracts and have sometimes been called contracts implied in fact. [Footnotes omitted.]

It is clear from the taxpayers' own demand for payment for the services allegedly rendered to the Government that any obligation to pay does not arise from the mutual agreement, either expressed or implied, which is a prerequisite of a contract implied in fact. Unless there is a contract implied in fact, there can be no jurisdiction under the Tucker Act. The taxpayers' theory of recovery is one of a contract implied in law. He is alleging that the law, the Fifth and Thirteenth Amendments of the Constitution, has imposed a duty upon the United States, irrespective of and in violation of its intention. Section 1346(a)(2) grants jurisdiction to the District Courts over "claims" based on "legal rights" where the right is

created by the Constitution or an act of Congress. Cf. Schwartz and Jacoby, Government Litigation, pp. 202-203, and the cases cited therein. Because no statute created the right to the compensation the taxpayer seeks, it is clear, therefore, that the Tucker Act does not confer jurisdiction on the District Court to hear this case, and that the District Court correctly dismissed taxpayers' complaint.

C. Taxpayers' complaint improperly sought to restrain the assessment and collection of a tax in violation of Section 7421(a) of the Internal Revenue Code of 1954

Taxpayers also sought to "Permanently enjoin the defendants from further violation of the Fifth, Thirteenth and other applicable amendments of the Constitution and the rights of free men and women thereunder." (R. 2, 4.) This prayer for relief is quite vague but it appears that the taxpayers are seeking to restrain the Commissioner from proceeding against them in any matter regarding the collection or assessment of federal income taxes.

Section 7421(a) of the Internal Revenue Code of 1954 (Appendix, *infra*) provides that the federal courts are without jurisdiction to grant such relief:

> Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

The statutory exceptions to the general rule are clearly inapplicable to the facts of the instant case.

Section 7426[3] regulates civil actions by persons other than taxpayers, while Sections 6212 and 6213 limit the Commissioner's power to assess additional deficiencies after the filing of a timely petition with the Tax Court.

Because the statute is so clear, the only question remaining is whether the statute is applicable in the instant matter. If the statute applies, the matter is ended because the District Court correctly determined that it lacked jurisdiction. If the statute does not apply, the taxpayers must still establish grounds for the court to invoke its equity jurisdiction. The leading case in the narrow situation where Congress intended that the statutory prohibition not apply is *Enochs v. Williams Packing Co.,* 370 U.S. 1, 7-8 (1962):

> The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund. In this manner the United States is assured of prompt collection of its lawful revenue. Nevertheless, if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the *Nut Margarine* case, the attempted collection may be enjoined if equity jurisdiction otherwise exists. In such a situation the exaction is merely in "the guise of a tax." *Id.* [284 U.S.], at 509.

---

[3]Added by Section 110(a), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125.

> We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit. Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained. Otherwise, the District Court is without jurisdiction, and the complaint must be dismissed. To require more than good faith on the part of the Government would unduly interfere with a collateral objective of the Act—protection of the collector from litigation pending a suit for refund. And to permit even the maintenance of a suit in which an injunction could issue only after the taxpayer's nonliability had been conclusively established might "in every practical sense operate to suspend collection of the . . . taxes until the litigation is ended." *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 299. * * *

In order to restrain the assessment and collection of any tax, a taxpayer must, therefore, establish that under no circumstances could the Government possibly prevail in an action on the merits. Unless this is shown, all other factors are irrelevant, and the Court has no jurisdiction. In the instant case, taxpayers have failed to show that the Government could not possibly prevail. General allegations that collection of the tax would be illegal or unconstitutional are insufficient to meet the strict test of the *Williams Packing Co.* case. This Court fully recognizes these principles. *Enterprises Unlimited, Inc. v. Davis,* 340

F. 2d 472 (1965) (where there was a dispute over the identity of the proper person against whom taxes should be assessed); *Walker v. Internal Revenue Service, U.S. Treasury Dept.,* 333 F. 2d 768 (1964), certiorari denied, 380 U.S. 926 (1965).

A particularly instructive case is *Moon v. Freeman,* 245 F. Supp. 837 (E.D. Wash., 1965), where the taxpayer sued to recover $168.52 paid to purchase wheat marketing export certificates or, in the alternative, sought to restrain the enforcement of that statute requiring the purchase of wheat marketing export certificates because such certificates constituted a tax or a duty on exports in violation of Article I, Section 9, Clause 5, of the United States Constitution. In that action, the taxpayer could prevail only if the required purchase of the export certificates was a tax and could, therefore, be successful in the action for an injunction only by establishing that Section 7421(a) of the Internal Revenue Code of 1954 was not applicable in her case. The court held that these general allegations of unconstitutionality were insufficient to meet the test of the *Williams Packing Co.* case.

It follows that, for these reasons, the decision of the District Court was correct and that the court lacked the jurisdiction to hear this portion of taxpayers' complaint.

D. Taxpayers' complaint improperly sought a declaratory judgment as to the constitutionality of the Internal Revenue Code of 1954

Taxpayers' complaint has requested a judgment against the United States to the effect (R. 4):

> That in entirety the Internal Revenue Code of 1954, Public Law 591, Chapter 736, 83rd Congress, 2nd Session, H. R. 8300, be declared to be an unconstitutional and unlawful act by said Congress and, therefore, of no force or effect, as having at its foundation the impressment of free men and women into involuntary servitude and not having the authority or power to do so in this free land.

This prayer obviously constitutes a request for a declaratory judgment with respect to federal taxes. Clearly, such a request has been placed beyond the jurisdiction of the District Court by 28 U.S.C., Section 2201 (Appendix, *infra*) (commonly known as the Declaratory Judgment Act:

> In a case of actual controversy within its jurisdiction, *except with respect to Federal taxes,* any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. [Emphasis added.]

The power of Congress so to limit the jurisdiction of the federal courts to non-tax matters was recognized by the United States Supreme Court in *Great Lakes Co. v. Huffman,* 319 U.S. 293, 301 (1943). This Court has long recognized this basic principle. *Mayer v. Wright,* 251 F. 2d 178 (1958); *Martin v. Andrews,* 238 F. 2d 552 (1956); *Royce v. Squire,* 168 F. 2d 250

(1948). It follows from these clear expressions of law that the District Court correctly ruled that it lacked jurisdiction to grant a declaratory judgment in a case with respect to federal taxes.

CONCLUSION

For the reasons stated, the order of the District Court was correct and should be affirmed.

Respectfully submitted,

MITCHELL ROGOVIN,
Assistant Attorney General.
LEE A. JACKSON,
ELMER J. KELSEY,
STEPHEN H. HUTZELMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:
JOSEPH L. WARD,
United States Attorney.

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

RICHARD L. CARICO,
Assistant United States Attorney.

(Appendix Follows)

Appendix

Appendix

CONSTITUTION OF THE UNITED STATES:

Article I

* * * * *

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

---

28 U.S.C.:

§1346. *United States as defendant.*

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * * * *

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * * * *

§2201. *Creation of remedy.*

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

INTERNAL REVENUE CODE OF 1954:

Sec. 6001. Notice or Regulations Requiring Records, Statements, and Special Returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

(26 U.S.C. 1954 ed., Sec. 6001.)

Sec. 6011. General Requirement of Return, Statement, or List.

(a) *General Rule.*—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

* * * * *

(26 U.S.C. 1964 ed., Sec. 6011.)

Sec. 6012. Persons Required to Make Returns of Income.

(a) *General Rule.*—Returns with respect to income taxes under subtitle A shall be made by the following:

(1) Every individual having for the taxable year a gross income of $600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of $1,200 or more);

* * * * *

(26 U.S.C. 1964 ed., Sec. 6012.)

Sec. 7203. Willful Failure to File Return, Supply Information, or Pay Tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by

regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(26 U.S.C. 1964 ed., Sec. 7203.)

Sec. 7210 [as amended by Sec. 4(b), Act of April 2, 1956, c. 160, 70 Stat. 87; Sec. 208(d), Highway Revenue Act of 1956, c. 462, 70 Stat. 374, 387; and Sec. 202(d), Excise Tax Reduction Act of 1965, P.L. 89-44, 79 Stat. 136]. Failure to Obey Summons.

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420 (e) (2), 6421 (f) (2), 6424 (d) (2), 7602, 7603, and 7604 (b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

(26 U.S.C. 1964 ed., Sec. 7210.)

Sec. 7421 [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125.] Prohibition of Suits to Restrain Assessment or Collection.

(a) *Tax.*—Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

(26 U.S.C. 1964 ed., Sec. 7421.)

TREASURY REGULATIONS IN INCOME TAX (1954 Code):

§ 1.6001-1 *Records.*

(a) *In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

* * * * *

(26 C.F.R. Sec. 1.6001-1.)